

RECEIVED
FEDERAL ELECTION
COMMISSION

2011 MAY 10 PM 4:59

CELA

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)

MUR 5926

Republican Party of Minnesota and)

David E. Sturrock, in his official)

capacity as treasurer)

Marina Taubenberger)

GENERAL COUNSEL'S REPORT #3

I. ACTIONS RECOMMENDED

(1) Find probable cause to believe that the Republican Party of Minnesota and David E. Sturrock, in his official capacity as treasurer, violated 2 U.S.C. §§ 434(b) and 441a(f) and 11 C.F.R. §§ 102.5(a) and 106.7(f); (2) find no reason to believe that Marina Taubenberger violated 2 U.S.C. § 434(b); and (3) approve the _____ Factual and Legal Analysis.

II. BACKGROUND

This matter concerns the Republican Party of Minnesota ("RPM" or "the Committee") failing to disclose outstanding debts to vendors totaling over \$990,000, failing to disclose as debt over \$7,000 in withheld employees retirement contributions, and failing to disclose unreimbursed staff advances as outstanding debts. This matter also concerns RPM's excessive transfers of over \$1.4 million of non-federal funds to its federal account for allocated administrative expenses.

On December 2, 2008, the Commission found reason to believe that the Republican Party of Minnesota and its treasurer violated 2 U.S.C. §§ 434(b), 441b(a) and 441a(f) and 11 C.F.R. §§ 102.5(a) and 106.7(f). The Commission's Audit Division conducted a targeted audit of RPM. On August 24, 2010, the Commission determined to enter into pre-probable cause conciliation with the Committee, which was ultimately unsuccessful. See MUR 5926 Memorandum to the

11044301713

Commission dated March 8, 2011. On March 18, 2011, this Office served the General Counsel's Brief, incorporated herein by reference, on the Committee. The GC Brief sets forth the factual and legal basis upon which this Office recommends that the Commission find probable cause to believe that the Committee violated the Federal Election Campaign Act of 1971, as amended, ("the Act") and Commission regulations. Counsel for the Committee did not file a response to the GC Brief by the deadline. We confirmed with the Committee that it does not intend to file a response and the Committee informed us that it does not dispute the facts or the violations set forth in the GC Brief, and that, should the Commission find probable cause to believe in this matter, the Committee intends to engage in conciliation negotiations.

III. ANALYSIS

A. RPM Failed to Disclose Vendor Debts

In May 2008, the Committee filed amendments to its 2006 disclosure reports, disclosing previously unreported vendor debts of \$441,452. Further, the Committee has not disclosed at least an additional \$552,867 in debts owed during calendar year 2006. See GC Brief at 4-5. Section 434(b)(8) of the Act requires committees to disclose the nature and amount of outstanding debts and obligations in their reports. These debts and obligations must be continuously reported until they are extinguished. 11 C.F.R. § 104.11(a). Accordingly, we recommend that the Commission find probable cause to believe that the Republican Party of Minnesota and David E. Sturrock, in his official capacity as treasurer, violated 2 U.S.C. § 434(b) by failing to timely disclose at least \$994,319 in outstanding debt to vendors during 2006.

B. RPM Failed to Timely Forward Withheld Funds to Employees' Retirement Accounts and Failed to Report Unreimbursed Staff Advances as Contributions and Outstanding Debts

RPM did not timely forward withheld retirement funds for the first five months of 2006.

Specifically, RPM's payroll documentation indicates that between January 15, 2006 and May 31, 2006, RPM withheld retirement contributions totaling \$7,623 from four employees. RPM was required to treat and disclose the withheld retirement account funds as debt, but failed to do so, in violation of 2 U.S.C. § 434(b). See 11 C.F.R. §§ 104.3(d) and 104.11(b). See GC Brief at 5-7. Accordingly, we recommend that the Commission find probable cause to believe that the Republican Party of Minnesota and David E. Sturrock, in his official capacity as treasurer, violated 2 U.S.C. § 434(b) by failing to report at least \$7,623 in withheld employee retirement contributions as debt.

RPM also failed to disclose unreimbursed staff advances as contributions and outstanding debts in violation of the Act. See GC Brief at 7-8. The payment by an individual from his or her personal funds, including a personal credit card, for the costs incurred by or on behalf of a candidate or political committee is a contribution unless the payment is exempted from the definition of contribution under 11 C.F.R. § 100.79. 11 C.F.R. § 116.5. A committee must treat the obligation arising from the payment described above as an outstanding debt until reimbursed (see 11 C.F.R. § 116.5(c)), and the debt is therefore subject to the reporting requirements of 2 U.S.C. § 434(b).

Although the amount of the unreimbursed staff advances is unknown, the memorandum written by former RPM finance director Dwight Tostenson is evidence of the violation and the violation has not been disputed by the Committee. Accordingly, we recommend that the Commission find probable cause to believe that the Republican Party of Minnesota and David

11044301715

E. Sturrock, in his official capacity as treasurer, violated 2 U.S.C. § 434(b) by failing to report unreimbursed staff advances as contributions and outstanding debts.

C. The Committee Made Excessive Non-Federal Transfers for Allocated Administrative Expenses

Where a committee has established both a federal and a non-federal account, only funds subject to the limitations and prohibitions of the Act shall be deposited into the separate federal account. 11 C.F.R. § 102.5(a)(1)(i). A state party committee may transfer funds from its non-federal account to its federal account solely to meet allocable expenses, such as administrative costs that are not directly attributable to a clearly identified federal candidate. 11 C.F.R. § 106.7(f).

RPM incurred \$2,736,692 in administrative expenses during the 2006 election cycle. The federal share of these expenses totaled \$574,342 and the non-federal share totaled \$2,162,350. However, during this same time period, RPM made 51 transfers from its non-federal account to its federal account totaling \$2,723,202 and reported these transfers on Schedules H3 (Transfers from Non-Federal Accounts for Allocated Federal/Non-Federal Activity), resulting in excessive transfers from RPM's non-federal account in the amount of \$560,852. See GC Brief at 8-10.

A review of RPM's 2006 state disclosure reports filed with the Minnesota Campaign Finance and Public Disclosure Board showed that RPM's state account accepted contributions from individuals in amounts larger than \$10,000. Available at <http://www.cfboard.state.mn.us/>. In transferring excess non-federal funds into its federal account, the Committee has transferred non-federal funds containing contributions in amounts above the \$10,000 yearly limit for individual contributions to a state party committee's federal account. See 2 U.S.C. §§ 441a(a) and 441a(f); Minnesota Statute Chapter 10A, Section 27. RPM has not refuted this finding and has not transferred non-federal funds from its federal account back to its non-federal account to

11044301716

1 rectify the excessive transfers. Accordingly, we recommend that the Commission find probable
2 cause to believe that the Republican Party of Minnesota and David E. Sturrock, in his official
3 capacity as treasurer, violated 2 U.S.C. § 441a(f) and 11 C.F.R. §§ 102.5(a) and 106.7(f) by
4 making \$560,852 in excessive transfers from its non-federal account.

5 **D. There Is No Reason to Believe that Marina Taubenberg Violated 2 U.S.C.**
6 **§ 434(b)**
7

8 Because Marina Taubenberg was RPM's treasurer during the 2006 election cycle at the
9 time of the events described in the complaint, the complaint in this matter named her as a
10 respondent and specifically alleged that she violated 2 U.S.C. § 434(b) by failing to disclose
11 certain debts and obligations. However, at the time the complaint was filed, Ms. Taubenberg
12 was no longer the treasurer for the Committee. In accordance with the Commission's policy on
13 treasurers, only the current treasurer of a political committee will be named in his or her official
14 capacity, unless information indicates that a treasurer has knowingly and willfully violated a
15 provision of the Act or regulations, or has recklessly failed to fulfill duties specifically imposed
16 on treasurers by the Act, or has intentionally deprived himself or herself of the operative facts
17 giving rise to the violation. See Statement of Policy Regarding Treasurers Subject to
18 Enforcement Proceedings, 70 Fed. Reg. 3 (January 3, 2005). In that case, a past or present
19 treasurer may be named in his or her personal capacity. At the First General Counsel's Report
20 stage in this matter, the Commission took no action as to Ms. Taubenberg. See MUR 5926
21 Commission Certification dated December 8, 2008. The evidence in this matter does not
22 indicate Ms. Taubenberg should be held liable in her personal capacity. Accordingly, we
23 recommend that the Commission find no reason to believe that Marina Taubenberg violated
24 2 U.S.C. § 434(b).

11044301717

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20

11044301718

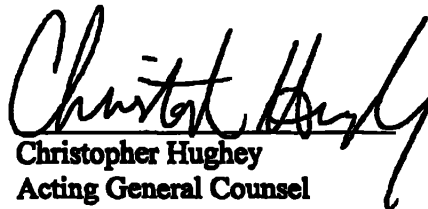
11044301719

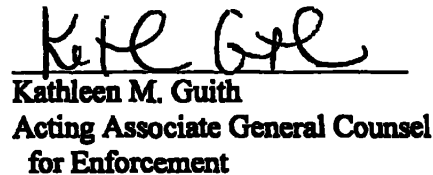
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16

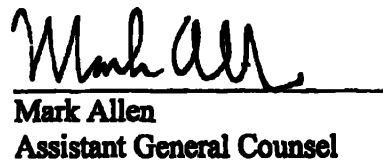
V. RECOMMENDATIONS

1. Find probable cause to believe that Republican Party of Minnesota and David E. Sturroid, in his official capacity as treasurer, violated 2 U.S.C. §§ 434(b) and 441a(f) and 11 C.F.R. §§ 102.5(a) and 106.7(f).
2. Find no reason to believe that Marina Taubenberger violated 2 U.S.C. § 434(b).
3. _____
4. Approve the attached Factual and Legal Analysis.
5. Approve the appropriate letter.

S-10-2011
Date


Christopher Hughey
Acting General Counsel


Kathleen M. Guith
Acting Associate General Counsel
for Enforcement


Mark Allen
Assistant General Counsel


Kasey Morgenheim
Attorney

11044301720